

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:12-CR-132

v.

HON. ROBERT HOLMES BELL

JOSEPH MARTINEZ,

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant Joseph Martinez has filed a motion for modification or reduction of sentence (ECF No. 1523) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

The Probation Department has filed a Sentence Modification Report (ECF No. 1621) indicating the underlying act of Assault With Intent to Murder controls the guideline, pursuant to USSG § 1B1.10. Therefore, the probation department does not recommend a reduction in sentence in this matter.

Defendant filed a response to the Sentence Modification Report (ECF No. 1633). While he does not qualify for a sentence reduction at this time, he wishes to reserve the right to renew his motion in the event the law changes. The Government filed a response to the Sentence Modification Report (ECF No. 1643) concurring with the Probation Department's assessment that Defendant is ineligible for a sentence reduction.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (ECF No. 1523) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

Dated: May 16, 2016

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE